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OFFICE OF PETITIONS

In re Patent No. 7,523,096	:	
Badros et al.	:	DECISION ON RENEWED
Application No. 10/726,410	:	REQUEST FOR
Issue Date: April 21, 2009	:	RECONSIDERATION OF
Filed: December 3, 2003	:	PATENT TERM ADJUSTMENT
Attorney Docket No.: 16113-1100001	:	UNDER 37 CFR § 1.705(d)
	:	and
	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "RESPONSE TO DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d) and NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION," filed on October 22, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from four hundred and seventy-four (474) days to five hundred and seventy-four (574) days.

The request for reconsideration of patent term adjustment is **GRANTED TO THE EXTENT INDICATED HEREIN.**

Patentee is given **THIRTY (30) DAYS OR ONE (1) MONTH**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised patent term adjustment of 573 days.

On April 21, 2009, the application matured into U.S. Patent No. 7,523,096, with a revised patent term adjustment of 408 days.

On June 16, 2009, Patentees timely submitted a request for reconsideration of patent term adjustment (original petition)

within two months of the issue date of the patent, along with the associated fee. A decision on the original petition was mailed on September 23, 2009, which indicated that the original petition was granted to the extent that the patent term would be adjusted to 474 days.

This renewed petition was filed on October 22, 2009. Despite the fact that this renewed petition was filed more than 180 days since the issuance of the patent, this submission is timely as the request for reconsideration of the decision on the original petition was filed within two months of the date of the decision on the original petition. See 1351 Off. Gaz. Pat. Office 204 (February 23, 2010).

Patentee has indicated that his patent is not subject to a terminal disclaimer.¹

The period of examination delay of 562 days is not in dispute.²

The period of applicant delay of 88 days is not in dispute.³

The period of zero overlap is not in dispute.⁴

The fact that a Request for Continued Examination (RCE) was filed on March 13, 2007 is not in dispute.⁵

The sole item in dispute is the period of B-delay. As the period from the filing date of the RCE to the issue date of the patent is not included in the "B" delay period, the over three year period begins on December 4, 2006 and ends on March 12, 2007, the day before the first RCE was filed, which amounts to 99 (not 100)⁶ days. See U.S.C. 154(b)(1)(B)(i). As such, the patent term adjustment is 573, not 574 days.

It follows that the patent term adjustment is increased by 573 (562 examination delay - 88 applicant delay + 99 "B-delay") days, not 574 days.

¹ Original petition, page 4.

² Id. at 2.

³ Id. at 4.

⁴ Id. at 3.

⁵ Id.

⁶ Original petition, pages 3 and 4.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The patent is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred and seventy-three (573) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanowski/
Paul Shanowski
Senior Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,523,096 B2

DATED : April 21, 2009

DRAFT

INVENTOR(S) : Badros et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 474 days

Delete the phrase “by 474 days” and insert – by 573 days--